

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB MAY 30, 00

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Generations Products, Inc., changed from Generations
Products, L.L.C.¹

Serial No. 75/294,636

Gunther J. Evanina of Price, Heneveld, Cooper, Dewitt &
Litton for applicant.

Lourdes D. Ayala, Trademark Examining Attorney, Law Office
106 (Mary Sparrow, Managing Attorney)

Before Chapman, Rogers and McLeod, Administrative Trademark
Judges.

Opinion by Chapman, Administrative Trademark Judge:

Applicant has filed an application to register the
mark shown below²

¹ Applicant submitted a copy of the articles of incorporation of Generations Products, Inc., and the Examining Attorney accepted applicant's statement that it is a corporation of Michigan. It is recommended that applicant record the transfer of interest with the Assignment Branch of this Office. See Section 10 of the Trademark Act, and Patent and Trademark Office Rules 3.25, 3.31, 3.41 and 3.85.

² The Board notes that in the original drawing the first word of the mark is GENERATIONS, whereas in the substitute drawing, the first word is GENERATION. Although the presence or absence of the letter "S" in applicant's word "GENERATION[S]" is not a

for "hair products, namely, hair lotions, hair shampoos, hair conditioners, hair sprays, and hair pomades; skin care products, namely, body lotions, astringents for cosmetic purposes, sunscreen preparations, sun block preparations, sunscreens, sun tan gels, sun tan lotions, sun tan oils, skin cleansing lotions, skin conditioners, skin cleansing creams, skin lotions" in Class 3.³

The Examining Attorney refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, if applied to its identified goods, would so resemble the registered mark, GENERATION for "hair groom, hair conditioner and hair shampoo" in Class 3, as to be likely to cause confusion, mistake or deception.⁴

When the refusal was made final, applicant appealed. Briefs have been filed, but an oral hearing was not requested.

decisive factor in this decision, nonetheless, the Examining Attorney should have obtained clarification of this matter during the ex-parte prosecution of the application.

³ Application Serial No. 75/294,636, filed May 19, 1997. The application is based on applicant's assertion of a bona fide intention to use the mark in commerce. Applicant disclaimed the term "products."

We reverse the refusal to register. In reaching this conclusion, we have considered all of the relevant du Pont⁵ factors.

We turn first to a consideration of applicant's goods vis-a-vis those of the cited registrant. We find that the goods are in part identical (hair shampoo and hair conditioner are in both the application and the registration), and the goods are otherwise related personal grooming products. Applicant did not argue to the contrary. See *In re American Safety Razor Co.*, 2 USPQ2d 1459 (TTAB 1987); *Royal Hawaiian Perfumes, Ltd. v. Diamond Head Products of Hawaii, Inc.*, 204 USPQ 144 (TTAB 1979); and *Frances Denney v. ViVe Parfums Ltd.*, 190 USPQ 302 (TTAB 1976).

Likewise, we do not find any differences in the channels of trade or purchasers. We must presume, given the identifications, that the goods travel in the same channels of trade, and are purchased by the same class of purchasers. See *Canadian Imperial Bank of Commerce v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir.

⁴ Registration No. 845,152, issued February 27, 1968, Section 8 affidavit accepted, renewed. The claimed date of first use is October 24, 1966.

⁵ See *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973).

1987)); and In re Smith and Mehaffey, 31 USPQ2d 1531 (TTAB 1994).

Turning to a consideration of the marks, it is well settled that marks must be considered in their entirety, not dissected or split into component parts and each part compared with other parts. That is, because it is the entirety of the involved marks which is perceived by the purchasing public, it is the entirety of the marks that must be compared. It is the impression created by the marks as a whole that is important. See *Opryland USA Inc. v. The Great American Music Show Inc.*, 970 F.2d 847, 23 USPQ2d 1471 (Fed. Cir. 1992); and *Kangol Ltd. v. KangaROOS U.S.A. Inc.*, 974 F.2d 161, 23 USPQ2d 1945 (Fed. Cir. 1992). See also, 3 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, §23:41 (4th ed. 2000).

The Examining Attorney argues that the words GENERATION PRODUCTS are the dominant feature of applicant's mark. In fact, the Examining Attorney states that "it is entirely appropriate to view GENERATION PRODUCTS singularly to make a determination on the likelihood of confusion since one feature of a mark may be recognized as more significant in creating a commercial impression and greater weight may be given to that dominant feature." (Brief, p. 5). We disagree with the Examining Attorney that with

regard to applicant's mark the words GENERATION PRODUCTS may be viewed alone in the likelihood of confusion analysis.

Rather, we agree with applicant's argument that the additional words "BECAUSE FAMILY IS WHAT IT'S ALL ABOUT!" should be afforded at least equal weight because they form an integral part of applicant's mark, and because there is an additional emphasis on those words due to their enclosure in emphatic punctuation (quotes and an exclamation point).

In the case before us, the cited registrant's mark is a typed presentation of the word GENERATION, whereas applicant's mark is composed of two equally significant lines consisting of nine words and some punctuation--one line with the words GENERATION PRODUCTS and a second line consisting of the words "BECAUSE FAMILY IS WHAT IT'S ALL ABOUT!". When considered in its entirety, we find that applicant's mark presents a different commercial impression from that of the cited registrant's mark. Specifically, applicant's mark connotes a very clear connection to generations of individual people within a family, whereas the cited mark simply connotes the general word "generation" which could relate to any one of various meanings of the word "generation," such as offspring of

people, or a stage in a life cycle, or a group of people living at about the same time, or sequential development of the products themselves.⁶

Moreover, applicant argues that the word GENERATION is weak as shown by several third-party registrations in the field of hair care products which include the word GENERATION in the mark.⁷ Third-party registrations are not evidence of commercial use of the marks shown therein, or what happens in the marketplace, or that consumers are familiar with the third-party marks. See *Olde Tyme Foods Inc., v. Roundy's Inc.*, 961 F.2d 200, 22 USPQ2d 1542, 1545 (Fed. Cir. 1992); and *Spoons Restaurants Inc. v. Morrison Inc.*, 23 USPQ2d 1735 (TTAB 1991), *aff'd unpub'd*, Appeal No. 92-1086 (Fed. Cir. June 5, 1992). However, such registrations are competent to show that others in a particular industry have registered marks incorporating a

⁶ See The American Heritage Dictionary (3rd ed.) definition of the term "generation" submitted by the Examining Attorney with the brief.

⁷ Applicant submitted third-party applications and registrations in the form of a printout from a private company's trademark database. (The evidence of third-party pending applications is of no probative value.) Normally this submission would not be an appropriate method of submitting credible evidence of the existence of the registrations listed therein. Rather, third-party registrations should be submitted in the form of plain, soft photocopies of the registrations or the electronic equivalent thereof printed from the Patent and Trademark Office's automated search system. See TBMP §703.02(b), and cases cited therein. However, the Examining Attorney did not object and, in fact, treated the submission as if of record. Accordingly, the Board also treated them of record.

particular term, and that the registrations in that trade are entitled to only a narrow scope of protection. See *Henry Siegel Co. v. M & R International Manufacturing Co.*, 4 USPQ2d 1154 (TTAB 1987); *In re Hamilton Bank*, 222 USPQ 174 (TTAB 1984); and *BAF Industries v. Pro-Specialties, Incorporated*, 206 USPQ 166 (TTAB 1980).

Here applicant has made of record third-party registrations including the word GENERATION which are for the same or related goods as those of applicant and the cited registrant. Among the third-party registrations are (i) NEXXT GENERATION and design for hair styling preparation, finishing spray and instant conditioner; (ii) THE SECOND GENERATION for hair care products including a hair permanent kit, curl/wave activator creams, sprays and mousses, and vitamin-enriched hair lotion; (iii) MY GENERATION for, inter alia, shampoos, preparations for the hair, body lotions and body creams; and (iv) GENERATION SOUIRIRE for, inter alia, hair lotions and skin and body lotions. Thus, it appears that the term GENERATION is hardly a unique term for use in connection with hair care products. Rather, there is a limited meaning and scope of protection for each mark within its own niche.

When the marks, GENERATION and _____, are considered in their entirety as the purchasing public

views them, we find that the sound, appearance, and commercial impressions created by the two involved marks are dissimilar.

Decision: The refusal to register under Section 2(d) is reversed.

However, applicant is allowed until twenty days from the mailing date stamped on this order to submit a substitute drawing, as explained in footnote 2 above. If applicant does not submit a substitute drawing, then the application will be forwarded for publication with the mark as it now appears in the drawing (i.e., with the word GENERATION in the singular).

B. A. Chapman

G. F. Rogers

L. K. McLeod
Administrative Trademark Judges,
Trademark Trial and Appeal Board